Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

HAROLD BRIAN KRIEG,

Petitioner

v.

KENT J. DAWSON; et al.,

Respondents

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

HAROLD BRIAN KRIEG
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PROPER PERSON

QUESTION(S) PRESENTED

Was Pro Se Plaintiff, Harold Brian Krieg, denied his rights to a fair trial?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:
The opinion of the United States court of appeals appears at Appendix A to the petition and is [X] is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is [X] is unpublished.

JURISDICTION

[X] For cases from federal courts:
The date on which the United States Court of Appeals decided my case was on August 19, 2009.

A copy of that decision appears at the Appendix A.

[X] A timely petition for rehearing en banc, was denied by the United States

Court of Appeals on the following date December 14, 2009, and a copy of the order denying rehearing appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

First Amendment – Freedom Of Speech

Ninth Amendment

Fourteenth Amendment – Equal Rights Protection

STATEMENT OF THE CASE

Through out this Petition For Writ Of Certiorari, Pro Se Plaintiff Appellant Petitioner, Harold Brian Krieg, will show the United States Supreme Court, an ample amount of proof, as to why he (Krieg) was denied a fair trial and retaliated against for exercising

his Rights under the 1st Amendment – Freedom of Speech Mr. Krieg will also show how the Defendants (individually, some of, and as a group) also took out their retaliatory actions of Mr. Krieg's friend, Steven Crain, in his cases (United States District Court Case Nos. 2:08-cv-00818-KJD-PAL and 2:08-cv-01808-KJD-PAL and 2:09-cv-01099-RLH-PAL. The initials KJD stand for Kent J. Dawson. The initials RLH stand for Roger L. Hunt.

After June 27, 2006, when presiding United States District Court Judge Kent J. Dawson unethically and wrongfully dismissed Mr. Krieg's case cv-s-05-0525-KJD-PAL, even though Mr. Krieg showed an ample amount of proof, Mr. Krieg started to exercise his Freedom of Speech right, by publicly criticizing Judge Dawson, and exposing him (Dawson) for his (Dawson) current and past wrong-doings, including but not limited to his (Dawson) Canon violations, the way he (Dawson) discriminates against Pro Se litigants, etc.

Mr. Krieg has and continues to publicly criticize Judge Dawson, as well as the United States District Court – District Of Nevada system. Mr. Krieg has spoken and/or met with local and national newspaper and television news-reporters and producers, as well as talk-show hosts/hostess and producers, showing nearly a thousand pages of proof. It should be noted that Mr. Krieg is not the only one who has negatively criticized Judge Dawson.

Mr. Krieg has also wrote internet articles criticizing Judge Dawson and the United States District Court – District of Nevada.

On April 15, 2007, Mr. Krieg filed a formal complaint (Complaint Of Judicial Misconduct And Disability – Judicial Council Of The Ninth Circuit) against Judge Kent J. Dawson. Per policy, said Council notified Judge Dawson.

After reading about "Operation Greylord," an F. B. I. investigation of Cook County Court (Illinois), dealing with judicial and court corruption, on November 9, 2007, Mr. Krieg went to the local F. B. I. office, in Las Vegas, to file a complaint against Judge Kent J. Dawson and the United States District Court – District of Nevada. Mr. Krieg met with and spoke to an intake agent for a little of two hours, showing the agent an abundance of proof.

After learning the Richard Beasley is the head of the anti-corruption unit of the F. B. I. office in Las Vegas, Nevada, Mr. Krieg contacted Mr. Beasley. Said unit also handles civil rights violations. The corruption cases that are handled focus on allegations against legislators, Judges, and law enforcement officers) was not going to do anything about it.

Mr. Krieg also notified the USDOJ Civil Rights Division in Washington DC, as well as United States Senators Harry Reid and John Ensign, as well as the local Las Vegas office of the United States Attorney.

Later on Mr. Krieg discovered that the reason why Senator Reid would not do anything about Judge Dawson's violations is because it was Senator Reid worked adamantly to get Kent Dawson appointed as a federal Judge. It was also later discovered that Kent Dawson and Harry Reid did favors for each other.

On March 30, 2009, around the time that it was discovered that the presiding Judge (Dawson) in Mr. Crain's two United States District Court – District of Nevada cases was basing his (Dawson) decisions, not on the merit and law, but on the fact that Mr. Crain is Mr. Krieg's friend, Mr. Krieg decided to mail (via certified return receipt) a demand letter to United States District Court – District Of Nevada Judge Kent J. Dawson, Chief Judge Roger L. Hunt, United States District Court – District of Nevada, United States Attorney Gregory A. Brower, Assistant Attorney Rimantas A. Rukstele, the United States Attorney, and Senator Harry Reid.

Per, exhausting administrative relief, said personal injury demand letter, included the reasons (Legal Abuse Syndrome – a form of post traumatic stress disorder, intentional infliction of emotional distress, and negligent infliction of emotional distress), the amount sought ($50 million), and the time allotted to respond (10 days).

Since there was no response, Mr. Krieg filed his personals injury lawsuit against the Defendants on April 20, 2009, in Clark County District Court, Case No. A588171, Dept. No XVIII.

Also on April 20, 2009, Mr. Krieg went to the Las Vegas Constables office, so that they can serve both the Complaint and Summons on the named Defendants.

Soon after Defendants were served, their attorney (Mr. Rukstele) had the case transferred to the United States District Court – District of Nevada. It was. The new Case No. assigned was 2:09-cv-00757-LRH-LRL, then 2:09-cv-00757-PMP-LRL. The initials PMP stand for United States District Court – District of Nevada Judge Philip M. Pro.

On May 5, 2009, Mr. Krieg filed and served on Defendants a Motion To Transfer Venue. Based on what was going on, and Canon Code of Judicial Conduct Rule 3(C), and the Legal Abuse Syndrome inflicted on Mr. Krieg by the Defendants, Mr. Krieg felt he (Krieg) would not be able to get a fair trial. Said Motion was denied on July 28, 2009.

On May 26, 2009, Mr. Krieg filed and served on Defendants Emergency Motion To Show A Prima Facie Case Of Retaliation. Amongst other things, it said Motion showed time correlation between the time that Mr. Krieg sent his demand letter, filed and served his lawsuit on the Defendants and the adverse action Defendants did on taking it out on Mr. Krieg's friend, Mr. Crain.

On June 5, 2009, Mr. Krieg filed and served on Defendants Plaintiff's Response To Defendants'

Motion To Dismiss. On July 28, 2009, at a court hearing, Judge Pro granted Defendants' Motion To Dismiss.

On June 12, 2009, Mr. Krieg filed and served on Defendants Plaintiff's Response To Defendants Motion To Stay Proceeding. The Stay was granted. Justice delayed is justice denied.

On August 3, 2009, rather than file a Petition For Review in the United States District Court – District of Nevada, and thereby be subjected to further denial of justice, Mr. Krieg filed a Notice Of Appeal, 9th Circuit Court Case No. 09-16632.

On September 25, 2009, Mr. Krieg filed Appellant's Request To Show Additional Prima Retaliation, again showing further retaliatory actions in addition to one's Mr. Krieg mentioned in his May 26, 2009 Motion To Show A Prima Facie Case of Retaliation.

Despite the fact that the 9th Circuit Court of Appeals has a obligation to rectify the mistakes/errors committed by the United States District Court – District Of Nevada, the 9th Circuit Court failed in its duties, thereby leaving Mr. Krieg with no other option than to file a Petition For A Writ Of Certiorari in this United States Supreme Court.

In the documents, including but not limited to Mr. Krieg's Complaint, Mr. Krieg made mention that he is

receives social security disability because he is bipolar and also suffers from Legal Abuse Syndrome, and Type 2 non-insulin dependent diabetes. Mr. Krieg's disabilities have not only, on many times, been badly aggravated because of what the above name Defendants have done to him and the lower court presiding Judges, by not doing anything to prevent the Defendants from continuing the violations, have basically given the green light for the Defendants to continue to wreck havoc with Mr. Krieg's life, but to also commit these unconstitutional violations to anyone they choose to.

It must also be remembered that the named Defendants knew that Harold Krieg is a close friend of Steven Crain. Because of the Defendants actions, Mr. Krieg's and Mr. Crain's friendship has on several times, nearly been tearfully destroyed.

REASONS FOR GRANTING THE PETITION

Was Pro Se Plaintiff, Harold Brian Krieg, denied his rights to a fair trial?

Whether a case be criminal or civil, we are all entitled to a fair trial. Pro Se Plaintiff, Harold Brian Krieg, was denied his right to a fair civil trial.

Canon Rule 3 C. Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which: (c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding; (d) the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is: (i) a party to the proceeding, or an officer, director, or trustee of a party; (iii) known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or (iv) to the judge's knowledge likely to be a material witness in the proceeding; (e) the judge has served in governmental employment and in that capacity participated as a judge (in a previous judicial position), counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

Canon Rule 3 C. (2) A judge should keep informed about the judge's personal and fiduciary financial interests and make a reasonable effort to keep about the personal financial interests of the judge's spouse and minor children residing in the judge's household.

Canon Rule 3 C (4) Notwithstanding the preceding provisions of this Canon, if a judge would be disqualified because of a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the judge (or the judge's spouse or minor child) divests the interest that provides the grounds for disqualification

How could any United States District Court – District of Nevada Judge hear a case that involves the United States District Court – District of Nevada court system (one of the Defendants). Which Judge employed and paid by said court system would go against said court system. And three of the Defendants (U. S. Attorney Gregory Brower, Assistant U. S. Attorney Rimantas Rukstele, and the United States Attorney's office) are the attorneys representing the Defendants, including but not limited to the United States District Court – District of Nevada, and both a said Court Judge and a said Court Chief Judge.

The Due Process Clause incorporated the common-law rule requiring recusal when a judge has "a direct, personal, substantial, pecuniary interest" in a case, *Tumey v. Ohio*, 273 U. S. 510, 523, but this Court has also identified additional instances which, as an objective matter, require recusal where "the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable," *Withrow v. Larkin*, 421 U. S. 35, 47. Two such instances place the present case in proper context.

In *Re Murchison*, 349 U. S. 133. Finding that "no man can be a judge in his own case," and "no man is permitted to try cases where he has an interest in the outcome," id., at 136, the Court noted that the circumstances of the case and the prior relationship required recusal. The judge's prior relationship with the defendant, as well as the information acquired from the prior proceeding, was critical. In reiterating that the rule that "a defendant in criminal contempt proceedings should be [tried] before a judge other than the one reviled by the contemnor," *Mayberry v. Pennsylvania*, 400 U. S. 455, 466, rests on the relationship between the judge and the defendant, id., at 465, the Court noted that the objective inquiry is not whether the judge is actually biased, but whether the average judge in his position is likely to be neutral or there is an unconstitutional " 'potential for bias,' " id., at 466.

Retaliation – 18 USC § 1513

In his complaint, Mr. Krieg states that he has been retaliated against by the defendants, in violation the First Amendment. To state a claim for retaliation, a plaintiff must allege a "chronology of events which may be read as providing some support for an inference of retaliation." *McDonald v. Hall*, 610 F.2d 16, 18 (1" Cir. 1979). Plaintiff must allege (1) he engaged in constitutionally protected conduct, (2) he suffered an adverse action, and (3) there was a causal connection between the constitutionally protected

conduct and the adverse action, so that it can be said that the constitutionally protected conduct was a motivating factor for the adverse action. *Wheeler v. Natale*, 178 F.Supp.2d 407,410 (S.D.N.Y. 2001).

Throughout his (Krieg) filed and served documents, Mr. Krieg showed ample proof of continual retaliation. Not only were the retaliatory actions committed by the Defendants/Appellees (Kent Dawson and Roger Hunt) taken against Pro Se Plaintiff/Appellant, Mr. Krieg, but also upon Steven Crain (a friend of Mr. Krieg's). One look at the time frame between Mr. Krieg's filings in his (Krieg) case, and the denial or dismissal actions taken by Judge Dawson and Judge Hunt in Mr. Crain's cases will show a prima facie case of retaliation.

The fact is that Judge Kent Dawson did not like the fact that Mr. Krieg was speaking about him (Dawson) and his unethical and disregard for his (Dawson) judicial oath, and his (Dawson) disrespect for the law. Mr. Krieg has spoken to newspaper and television reporters criticizing Judge Dawson. Mr. Krieg has also spoken to talk-show producers about Judge Dawson. Mr. Krieg has also posted similar information about Judge Kent Dawson on numerous websites. Mr. Krieg also filed a complaint with the 9th Circuit Court Judicial Discipline Commission against Judge Kent Dawson. Said Commission did show a copy of Mr. Krieg's complaint against Judge Dawson to Judge Dawson, per the Commission's policy.

Right to Criticize Public Officials - In the instant case, this Court needs to begin their analysis by considering whether the underlying action taken by Mr. Krieg was a constitutionally protected activity. Of this there can be no doubt. The First Amendment clearly protects Mr. Krieg's right to criticize Judge Kent J. Dawson and/or the U. S. District Court – District Of Nevada in his role as a public official. See *Glasson v. City of Louisville* , 518 F.2d 899, 904 (6th Cir. 1975) ("The right of an American citizen to criticize public officials and policies and to advocate peacefully ideas for change is 'the central meaning of the First Amendment.'" (quoting *New York Times v. Sullivan* , 376 U.S. 254, 273 (1964))).

Rosenblatt v. Baer , 383 U.S. 75, 85 (1966)). The "[f]reedom to criticize public officials and expose their wrongdoing is at the core of First Amendment values.

It must also be noted that Mr. Krieg is not the only one who has posted critics and the truth about Judge Kent Dawson. See www.americanmafia.com/inside_vegas/9-10_Inside_Vegas.html, www.lvrj.com/news/10938041.html, www.ripoffreport.com/...s/.../allstate-financial-services-3xcx7.htm, www.americanmafia.com/.../11-24-08_Inside_Vegas.html, www.canadafreepress.com/index.php/article/13831, etc. It was even reported in another article, regarding an Irwin Schiff case, that then presiding Judge Kent

Dawson said that he (Dawson) is above the law, and that there is no room for justice and the law in his (Dawson) courtroom.

In 2 civil cases and a Writ of Habeas Corpus, that Mr. Krieg's friend Steven Crain filed in the United States District Court – District of Nevada, both Defendants had presided over Mr. Crain's cases, currently pending in higher courts, including but not limited to the United States Supreme Court. In documents filed by Mr. Krieg, Mr. Krieg showed prima facie instances of retaliation against both Mr. Krieg and Mr. Crain. Let it be known that Mr. Krieg is not a party in any of Mr. Crain's cases.

It is firmly established that an act taken in retaliation for the exercise of a constitutionally protected right is forbidden. *McDonald*, 6 10 F.2d at 18. The alleged retaliation by the defendants against an the plaintiff for pursuing legal action constitutes an interference with the plaintiff's right of access to the courts.

Retaliation prompted by "the exercise of a constitutionally protected right is in itself a violation of constitutional rights." *Isenberg v. Wigen*, 1995 WL 121560, *1 (E.D. Pa. Mar. 21, 1995) (citing *Milhouse v. Carlson*, 652 F.2d 371, 374 (3d Cir. 1981). An act of retaliation for the exercise of a constitutionally protected right is actionable under Section 1983 even if the act taken for different reasons would have been proper. *Drexel v. Horn*, 1997 WL 356484, *6 (E.D. Pa. June 20, 1997).

In an action under the retaliatory provisions, the plaintiff need not prove that the sole reason for the company's decision to terminate the plaintiff's employment was because of retaliatory conduct. It is sufficient to show that the retaliation played a part in the company's decision to terminate the plaintiff's employment. *McDonnell Douglas v. Green*, 411 U. S. 792, 804, 806, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). Although other reasons for termination may have existed, retaliation cannot be a factor in the decision.

Through out his case, Mr. Krieg has shown that retaliation played a part in his (Krieg) case being dismissed and how the Judges Kent Dawson and Roger Hunt retaliated against Mr. Krieg by also dismissing his friend's, Steven Crain, cases. Despite the fact that according to the Canon Rules, that if a Judges finds out that another Judge is committing a violation, that Judge is supposed to report the violating Judge. In Mr. Krieg's case, presiding Judge Philip M. Pro not only did not report either Judges Dawson or Hunt, but allowed them to continue.

Abrams v. Walker, 307 F.3d. 650 "An act taken in retaliation for the exercise of a constitution protected right violates the constitution. See also *DeWalt v. Carter* 224 F.3d 607 and *Morfin v. City of East Chicago*, 349 F.3d. 989.

With regard to *Rivera v. Chesney, et. al.*, Civil Case No. 97-7547, 1998 WL 639255, the United States

District Court For The Eastern District Of Pennsylvania, Order #6. Defendants' motion to dismiss plaintiff's claim for retaliation for plaintiff's exercise of constitutionally protected rights is DENIED as to defendants Miranda and Bolanis.

Futernick v. Sumpter Township, 78 F.3d 1051, 1057 (6th Cir.1996) (holding that "[i]t is clear that selective enforcement intended to discourage or punish the exercise of a constitutional right, especially the right to criticize the government, is sufficient basis for § 1983 relief"

The Supreme Court has held that, in the context of a § 1983 action, "compensatory damages may include . . . such injuries as 'impairment of reputation . . ., personal humiliation, and mental anguish and suffering.'" *Memphis Community School Dist. v. Stachura* , 477 U.S. 299, 307 (1986) (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974)). This court has also recognized these types of injuries. See *Barrett v. Harrington* , 130 F.3d 246 (6th Cir. 1997) (affirming a denial of summary judgment on qualified immunity grounds when a judge retaliated against a litigant by attempting to embarrass him); *Chatman v. Slagle*, 107 F.3d 380, 384-85 (6th Cir. 1997) (listing numerous cases that have found emotional distress to be a compensable injury under § 1983, including damages for "intimidation, marital problems, weight loss, loss of sleep, shock, or humiliation." (quoting *Holmes v. Donovan* , 984 F.2d 732, 739 (6th Cir.

1993))); *Pembaur v. City of Cincinnati*, 882 F.2d 1101, 1104 (6th Cir. 1989) ("[T]he injury need not have been a physical one. Damages for pain and suffering, mental anguish, and the like are available to the extent that actual injury has been proved.").

Other circuits have reached a similar conclusion. In *Bart v. Telford* , 677 F.2d 622 (7th Cir. 1982), for example, a city employee in the mayor's office ran in an election against the incumbent mayor. Upon the employee's return to the mayor's office after losing the election, her co-workers, including the mayor, began harassing her. She consequently brought a retaliation claim under § 1983. The employee alleged, among other things, that she was harassed for bringing a birthday cake to work on a co-worker's birthday, even though the office generally encouraged this type of behavior. While noting that many of the employee's claims of harassment seemed trivial, the Seventh Circuit observed that "[t]he effect on freedom of speech may be small, but since there is no justification for harassing people for exercising their constitutional rights it need not be great in order to be actionable."

The Seventh Circuit recognized, however, that a constitutional tort "to be actionable requires injury." Id. It added that "[i]t would trivialize the First Amendment to hold that harassment for exercising the right of free speech was always actionable no matter how unlikely to deter a person of ordinary firmness from that exercise." Finally, the court determined that "[i]t is a

question of fact whether the campaign [of petty harassments] reached the threshold of action ability under section 1983." Id. The court then remanded the case for further proceedings.

For additional authorities on the issue of compensable injury, see, e.g. , *Bernheim v. Litt*_, 79 F.3d 318, 326 (2nd Cir. 1996) (holding that in a claim for retaliation, the "plaintiff's claim of `great worry and unhappiness' could reasonably be read as a claim for emotional distress, a legally recognized and compensable harm."); *Coleman v. Kaye* , 87 F.3d 1491, 1507 (3d Cir. 1996) (rejecting the defendant's "argument that [plaintiff] did not suffer an `actual injury' because a reasonable jury could credit [plaintiff's] testimony as to the personal anguish she suffered" as a result of the adverse action taken by the defendant); *Maldonado Santiago v. Velazquez Garcia* , 821 F.2d 822, 829 (1st Cir. 1987) ("It is well established that damages are recoverable under 42 U.S.C. section 1983 for emotional distress caused by due process deprivations.").

The emotional distress and Legal Abuse Syndrome suffered by Mr. Krieg is continually aggravated, since Mr. Krieg knows, just like many other Pro Se litigants, he (Krieg) will be robbed of his right to a fair trial, as long as Judges are given the green light to commit violations.

In *Barrett v. Harrington*, 130 F.3d 246 (6th Cir. 1997) This court next decided that Barrett's criticism

was a "`substantial' or `motivating' factor in Judge Harrington's conduct." Id. Considering the evidence in the record, there was no indication that Harrington would have accused Barrett of harassment if Barrett had refrained from criticizing her. This led to the possibility that "in speaking to the media, Harrington did have a retaliatory motive to publicly humiliate and denigrate" the litigant. Id. In light of these facts, Barrett's retaliation claim properly survived summary judgment.

Mr. Krieg has shown, via prior filed documents, of the contention that Kent J. Dawson and Roger L. Hunt made judgments in Mr. Krieg's friend Mr. Crain's cases with the intent to injure (emotional distress – Legal Abuse Syndrome, depression, and by violating Mr. Krieg's 1st Amendment rights) Mr. Krieg because Mr. Krieg publicly criticized both Judges Dawson's and Hunt's performances as well as the other named Defendants. Mr. Krieg thereby met the burden necessary to sustain the complaint.

In *Barrett v. Harrington* , 130F.3d 246 (6th Cir. 1997), concluded that Judge Harrington was not shielded from liability by the doctrine of qualified immunity. Specifically, this court held that "it is evident that the First Amendment right to criticize public officials is well- established and supported by ample case law. Furthermore, it is well-established that a public official's retaliation against an individual exercising his or her First Amendment rights is a violation of § 1983.

Finally, the courts that have considered qualified immunity in the context of a retaliation claim have focused on the retaliatory intent of the defendant. As the Tenth Circuit said in *DeLoach v. Bevers* , 922 F.2d 618, 620 (10th Cir. 1990): "The unlawful intent inherent in such a retaliatory action places it beyond the scope of a police officer's qualified immunity if the right retaliated against was clearly established." The Second Circuit also rejected the defense of qualified immunity in a retaliation case, finding that "the proscription of retaliation for a plaintiff's exercise of First Amendment rights has long been established." *Dobosz v. Walsh*, 892 F.2d 1135, 1141-42 (2d Cir. 1989). In addition, the Ninth Circuit articulated the principle that "government officials in general, and police officers in particular, may not exercise their authority for personal motives, particularly in response to real or perceived slights to their dignity. Surely, anyone who takes an oath of office knows-or should know-that much." *Duran v. City of Douglas* , 904 F.2d 1372, 1378 (9th Cir. 1990). Finally, as discussed above in *Barrett* , this court held that a judge was not immune from a § 1983 claim stemming from the judge's comments made to the media in retaliation for a former litigant's criticism of the judge's ethics. Not only was the right to criticize public officials held to be a clearly established right, "but Harrington knew or should have known that she may have been violating Barrett's First Amendment rights when she accused him of stalking to reporters." *Barrett* , 130 F.3d at 264.

We start our analysis on this aspect of the retaliation claim from the premise that "[a]n act taken in retaliation for the exercise of a constitutionally protected right is actionable under § 1983 even if the act, when taken for a different reason, would have been proper." *Matzker v. Herr*, 748 F.2d 1142, 1150 (7th Cir. 1984); see *DeLoach v. Bevers*, 922 F.2d 618, 620 (10th Cir. 1990) (same quotation). We also note that proof of an official's retaliatory intent rarely will be supported by direct evidence of such intent. See *McDonald v. Hall*, 610 F.2d 16, 18 (1st Cir. 1979) (reversing the district court's dismissal of the plaintiff's claim, holding that it will often be difficult to support a claim requiring a showing of the defendant's state of mind with direct evidence in a complaint). Accordingly, "claims involving proof of a [defendant's] intent seldom lend themselves to summary disposition." See *Curtis v. Story*, No. 87-5988, 1988 WL 125361, at *3 (6th Cir. Nov. 25, 1988).

While it is obvious, and given the past history of and connections of the named Defendants, in Mr. Krieg's case, just how many of them would actually admit to they acted intentionally and with malice and/or reckless indifference to Mr. Krieg's protected Freedom Of Speech rights. Because of such Mr. Krieg has suffered, is now suffering, and will continue to suffer from Legal Abuse Syndrome (a form of post traumatic stress disorder), non-self-induced vomiting (10 -15 times a day) (caused by the stress), smoking three packs of cigarettes a day, depression, emotional and judicial abuse by the Defendants.

How many Judges do you know who will bite the hand that feeds them. How many Judges would grant a verdict of $50 million (like Mr. Krieg is asking for) against fellow Judges and the court system they work for. One can compare what lengths Judges will go to cover for the misconducts of another Judge(s), to the way that a corporate executive would plead the 5th in order to not divulge the true wrong-doings of the company he works for and pays his/her astronomical salary.

Bart v. Telford , 677 F.2d 622, 625 (7th Cir. 1982) (noting that the plaintiff needed only to show "a suggestion [in the complaint] that the subsequent campaign of petty harassments was motivated by [the plaintiff's] views" in order to survive a motion to dismiss under Rule 12(b)(6)).

Despite the fact that it is against court rules for a defendant to retaliate against a plaintiff, presiding United States District Court – District of Nevada Philip Pro allowed the named Defendants to retaliate against Pro Se Plaintiff, Harold Brian Krieg, because of his (Krieg) exercising his Freedom of Speech rights.

By retaliating against Pro Se Plaintiff, Mr. Krieg, it can be said that the Defendants and presiding Judge Philip Pro clearly denied Mr. Krieg his (Krieg) fundamental rights to a fair trial, and Mr. Krieg's deep-seated rights guaranteed by both the First Amendment – Freedom of Speech and Fourteenth Amendment – Equal Rights Protection of the United States Constitution.

When the interest sought to be protected from unwarranted governmental intrusion is fundamental, a heightened degree of protection has been invoked by the courts, *Smith v. Goguen*, 415 U.S. 566, 573; cf. *Paul v. Davis*, 42 U. S. 693, 713. Thus, the threshold question in any due process inquiry is whether or not the interest sought to be protected is fundamental. Fundamental rights are those explicitly guaranteed by the Constitution or implicit in the concept of ordered liberty, *San Antonio School Dist. v. Rodriguez*, 411 U.S. 1, 17; *Palko v. Connecticut*, 302 U.S. 319, 324-325.

Fair trial before fair and impartial tribunal, whether court of administrative agency is the basic requirement of due process. U.S.C.A. Constitutional Amendment 14. *Baran v. Port of Beaumont* 57 F.3d 436, *Tyson v. City of Sunnyvale* 920 F.Supp 1054, and *Six v. Delo* 885 F.Supp 1265.

Constitutional Rights Of Citizens

Boyd v. United 116 U.S. 616 Justice Bradley said "It is the duty of the courts to be watchful for the Constitutional Rights of the Citizens..." *Gomillion v. Lightfoot* 364 U.S. 155 "Constitutional Rights would be of little value if they could be indirectly denied." *Norton v. Shelby County* 118 U.S. 425 "An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed.

Perjury

On July 28, 2009, at a 10:30 a.m. court hearing, Defendant/Defendants' Attorney, Rimantas A.Rukstele made a fallacious statement, in front of Judge Pro, Plaintiff Harold Krieg, and spectator Steven Crain, saying that Pro Se Plaintiff Mr. Krieg is representing Steven Crain. Mr. Krieg did explain to this Court that he (Krieg) is not representing Mr. Crain, nor is/was it Mr. Krieg's intention, in any way, shape of form to convey that. No where in documents, filed by Mr. Krieg, in his (Krieg) case, and/or Mr. Crain's two separate cases does it state that Mr. Krieg is counsel for Mr. Crain. Mr. Krieg's only reason why he (Krieg) included documents regarding Mr. Crain's other two separate cases was to show evidence regarding certain motions Mr. Krieg filed.

Prior to Mr. Rukstele's said statement, Mr. Rukstele handed both Mr. Krieg and Judge Pro, a copy of Page 2 of 2 of Westlaw 28 USC § 1654.

Mr. Rukstele (SBN #2088) clearly violated Nevada Rules of Professional Conduct Rule 4.1. Truthfulness in Statements to Others. In the course of representing a client a lawyer shall not knowingly: (a) Make a false statement of material fact or law to a third person. At the time Mr. Rukstele made that false allegation and distributed a copy of said Westlaw, the third parties were Judge Pro, Mr. Krieg, and Mr. Crain, and Mr. Rukstele was representing the Defendants.

The hypocrisy and audacity of Mr. Rukstele to make a statement saying essentially that Mr. Krieg has no right to make the accusations against a Federal Judge (referring to Judge Dawson). Yet, in court, Mr. Rukstele can make false allegations against Mr. Krieg. The fact is that Mr. Krieg exercised his 1st Amendment rights in making true statements against Judge Kent Dawson. By doing this was Defendant and Defendants' Attorney, Mr. Rukstele, trying to violate Mr. Krieg's right to freedom of speech.

The fact that Judge Pro is a Judge in the United States District Court – District of Nevada, and Defendants' Attorney Rimantas A. Rukstele is the attorney who represents both the United States District Court – District of Nevada and fellow Judge Kent Dawson and Chief Judge Roger Hunt explains why Judge Pro did not reprimand/sanction Rimantas Rukstele for lying to the court and saying that Harold Krieg is representing Steven Crain. Not once did Mr. Rukstele show any concrete evidence that supported his statement.

This direct relationship between the Defendants' Attorney and the United States District Court – District of Nevada Judges and system explains why Mr. Krieg filed a Motion To Transfer Venue.

28 USC 2401

Defendants, via their attorney, Rimantas A. Rukstele, stated, at the July 28, 2009 10:30 a.m. court

hearing that Pro Se Plaintiff, Harold Brian Krieg, failed to file an administrative claim, regarding his Federal Tort Claim. Mr. Krieg wishes to remind this Court that originally Mr. Krieg filed his personal injury lawsuit against the originally named Defendants in the Clark County District Court.

Under the Federal Tort Claim Act, the United States of America is liable for an injury or loss of property, or personal injury or death which is caused by the negligent, wrongful act or omission of an employee of the federal government while acting within the scope of his office or employment where the United States of America, if it were a private citizen, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. 28 U.S.C. 1346(b)(1).

According to 28 USC 2401(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

Clearly Mr. Krieg did in fact present in writing, to not only the United States Attorney's Office (Nevada) and the United States District Court – District of Nevada, but also to United States Attorney Gregory A. Brower, Assistant United States Attorney Rimantas A.

Rukstele, United States District Court – District of Nevada Chief Judge Roger L. Hunt, United States District Court – District of Nevada Kent J. Dawson., and United States Senator Harry Reid, a Personal Injury Demand Letter, dated March 28, 2009 for the sum of $50 million. Said Demand Letter was sent, via United States Postal Service – Certified Mail – Return Receipt on March 30, 2009, at 10:26 a.m., at the Downtown Las Vegas Postal Station.

Said Demand Letter was sent within the two years time limitation of when such claim accrued.

In his five page Demand Letter, Mr. Krieg explained the wrong doing, committed by those, who were later named as Defendants, and what Mr. Krieg sought as a remedy. None of those, that Mr. Krieg sent the Demand Letter, contacted Mr. Krieg to try and settle this matter

The Federal Agencies (the United States Attorney's office and the United States District Court – District of Nevada) were given fair notice of the conduct about which Mr. Krieg was/is complaining about and an opportunity to settle this dispute.

McKenzie v. Ill. Dep't of Transp., 92 F.3d 473, 481 (7th Cir. 1996); *Harper v. Godfrey Co.*, 45 F.3d 143, 147-48 (7th Cir. 1995); *Cheek v. Western & Southern Life Ins. Co.*, 31 F.3d 497, 500 (7th Cir. 1994). "This rule (referring to Exhausting Administrative Remedies) serves the dual purpose of affording the EEOC and the

employer an opportunity to settle the dispute through conference, conciliation, and persuasion, and of giving the employer some warning of the condition about which the employee is aggrieved." *Cheek*, 31 F.3d at 500; see also *Geldon v. South Milwaukee Sch. Dist.*, 414 F.3d 817, 819 (7th Cir. 2005) ("The rule is meant both to give the EEOC and employer an opportunity to settle the dispute and to give the employer fair notice of the conduct about which the employee is complaining.")

Because of the direct connection between the Defendants, in Mr. Krieg's case, and the presiding Judge Philip Pro, Judge Pro went against case law and said Mr. Krieg failed to exhaust administrative remedies. This too shows why this case should not have been heard by a Judge connected with the United States District Court – District of Nevada.

18 USC 241

If two or more persons conspire to injure, oppress, threaten or intimidate any person in any state, territory, commonwealth, possession, or district in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or the laws of the United States...they shall be fined under this title or imprisoned not more than 10 years or both.

While that may be true in theory, given who the two or more persons (Defendants) are and given the fact that the United States Attorney – Nevada office is

defending them, the Defendants, in Mr. Krieg's case, will never be charged, tried, and/or convicted of 18 USC 241.

Mr. Krieg provided the United States District Court with an over abundance amount of documents, information, etc. showing how the Defendants conspired to injure...because Mr. Krieg exercised his rights under the 1st Amendment Freedom of Speech. The injury does not have to be physical.

For a moment let's examine the word conspire. It is defined as a plot, a plan, a scheme. Must it be actually carried out, no, just thought of.

Mr. Krieg was/is still getting physically sick (non self-induced throwing up (10 to 15 times a day, everyday), migraine like headaches, waking up, several times, in the middle of the night in cold sweats, etc. Emotionally this was taking its toll on Mr. Krieg by Mr. Krieg having Legal Abuse Syndrome, stress, depression, anxiety attacks, mood swings, fear that as part of all of this has and continue to cause Mr. Krieg to smoke at least three packs of cigarettes a day. All of this has affected the last couple of years of Mr. Krieg's existence. Defendants have clearly denied Mr. Krieg pursuit of happiness.

The Defendants actions against Mr. Krieg have also had an emotional negative impact on his friendship with Mr. Crain. Since good friends are hard to come by, there have been a number of times that Mr. Krieg

wonders if his good friend, Steven Crain, has a hidden resentment toward Mr. Krieg because of Mr. Krieg's negatively speaking out about Judge Dawson, the presiding Judge in Mr. Crain's two separate lawsuits. There have even been times that Mr. Krieg wondered if Mr. Crain will break off his friendship with Mr. Krieg because it is/was causing major problems (Judge Dawson's vindictive actions and vendetta against Mr. Krieg) in Mr. Crain's two United States District Court lawsuits. There have even been at least a half a dozen times, over the past year plus, that because of the above listed Defendants' failures that Mr. Crain and Mr. Krieg's close friendship were on the verge of destruction.

On about seven of eight times, Mr. Krieg has even tearfully said to Mr. Crain that if it weren't for the fact that Judge Dawson has a vendetta against Mr. Krieg, Mr. Crain would have possibly had a fair trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

HAROLD BRIAN KRIEG
113 Paul Avenue
Las Vegas, Nevada 89106
(702) 241-2298
PROPER PERSON

APPENDIX

A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HAROLD BRIAN KRIEG,	No. 09-16632
Plaintiff – Appellant,	D.C. No. 2-09-cv-00757-PMP
v.	District of Nevada, Las
KENT J. DAWSON, Judge; et. al.,	Vegas
Defendants – Appellees.	ORDER

Before: TROTT, W. FLETCHER and RAWLINSON, Circuit Judges.

Appellant's petition for rehearing en banc, construed as a motion for reconsideration en banc of the October 22, 2009 order summarily affirming the judgment, is denied on behalf of the full court. See Ninth Cir. R. 27-10(b); General Orders 6.11.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submission shall be filed or entertained in this closed docket.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HAROLD BRIAN KRIEG,	No. 09-16632
Plaintiff – Appellant,	D.C. No. 2-09-cv-00757-PMP
v.	District of Nevada, Las Vegas
KENT J. DAWSON, Judge; et. al.,	
Defendants – Appellees.	ORDER

Before: TROTT, W. FLETCHER and RAWLINSON, Circuit Judges.

A review of the record, the response to the September 1, 2009 order to show cause, and the opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further argument. See *United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Accordingly, we summarily affirm the district court's judgment.

All pending motions are denied.

AFFIRMED

UNITED STATES DISTRICT COURT

_____DISTRICT OF Nevada_____

Harold Krieg

Plaintiff,

JUDGMENT IN A CIVIL CASE

v.

Kent J. Dawson, et. al.

Defendants.

Case Number: 2:09-cv-0757-PMP-LRL

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X **Decision by Court**. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

Notice of Acceptance with Offer of Judgment. A notice of acceptance with offer of judgment has been filed in this case.

IT IS ORDERED AND ADJUDGED
that judgment is entered in favor of the defendants and against plaintiff.

July 29, 2009
Date

/s/ Lance S. Wilson
Clerk

/s/ Andrew Mennear
(By) Deputy Clerk